

PHYSICIAN ASSISTANT COMMITTEE

INITIAL STATEMENT OF REASONS

Hearing Date: 31 May 2007

Subject Matter of Proposed Regulations:

(1) Section 1399.523.

Specific Purpose of each adoption, amendment, or repeal:

Government Code Section 11425.50(e) provides that a penalty in any administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedures Act.

In 1997 the committee adopted regulations that incorporated by reference disciplinary guidelines entitled, "Physician Assistant Examining Committee Manual of Model Disciplinary Guidelines and Model Disciplinary Orders" adopted by the committee on April 18, 1996. In 2002, the committee amended its regulation incorporating by reference the second edition of the disciplinary guidelines.

Since the last version of the disciplinary guidelines the committee has considered revisions to the guidelines incorporating additional violations and modifications to penalties to be consistent and appropriate to the practice of physician assistants.

The purpose of this proposal is replace the existing disciplinary guidelines with a document that is more clear, comprehensive, user-friendly, and up to date. The enhancements will better protect the public by providing additional guidance for determining penalties, discipline, and probation conditions for physician assistant licensees.

The committee proposes to amend the text of the regulation to substitute the reference from the 2nd edition to the 3rd edition of the "Physician Assistant Committee Manual of Disciplinary Guidelines and Model Disciplinary Orders."

Factual Basis/Rationale

The committee's mandate is to protect the health, safety, and welfare of California consumers. The committee's highest priority is to protect consumers by utilizing its authority to investigate complaints and take appropriate disciplinary action against licensees and applicants for licensure who endanger the health and safety of consumers.

The committee's disciplinary guidelines are intended to assist administrative law judges, deputy attorneys generals, committee members, and staff in selecting the most

appropriate penalty for a licensee who has violated the laws and regulations governing the practice of physician assistants.

Title 16, section 1399.523 of the California Code of Regulations, incorporates by reference the committee's "Manual of Disciplinary Guidelines and Model Disciplinary Orders 2nd Edition, 2002."

During January and February 2007 the committee's enforcement staff, legal counsel, and a committee member reviewed the current guidelines and to ensure that the language was clear and relevant to the physician assistant laws and regulations and to further enhance consumer protection. The final draft was presented to the full committee for review and on 15 February 2007 the committee approved the proposed revisions to the Disciplinary Guidelines. The revised document entitled, "Manual of Disciplinary Guidelines and Model Disciplinary Orders, 3rd Edition, 2007" is incorporated into the regulation by reference.

Summary of Changes:

Introduction: Non-substantive changes are proposed for clarification, easier reading and consistency. Duplicative language and the Standard Conditions list were deleted.

General changes to the conditions:

- 1) Revised numerical order of the conditions.
- 2) Deleted all "if warranted" statements because all disciplinary conditions are guidelines and should be applied based on the specifics of each case.
- 3) Moved the B&P Code section number in front of the violation description for easier identification.
- 4) Moved the condition "Monitoring/Supervision" to a standard condition, not optional condition and renamed it "Approval of Supervising Physician." Added a statement to the condition that, in all probation cases, the committee should approve the supervising physician.
- 5) Combined Model Disciplinary Orders: "Restricted Practice - Setting," "Restricted Practice – Patient", and "Restrict Practice – Incompetence" to one condition with the options listed. The new condition is entitled, "Prohibited Practice Areas."
- 6) Reworded and changed restrictions on drug order authority to always articulate whether there is partial or total restriction and maintain a log.
- 7) Added the conditions "Abstain from Alcohol and Drugs" and "Biological Fluid Testing" when a diversion requirement is included.

Causes for Discipline and License Restriction:

1) 141 B&P Code– Discipline by Another State or Agency has been added to 2305 B&P–Code Discipline by Another State.

2) 651 B&P Code - Deceptive Advertising. has been moved. Changed minimum penalty from a “Stayed Suspension” to “Stayed Revocation” with at least 2 years probation. Revoking the license then staying it is a more appropriate penalty and provides a greater opportunity to help ensure the violation is not repeated. Generally, citations would have been issued for first and second offenses. Reduced recommended suspension to 30 days.

3) 725 B&P Code - Excessive Treatments. Referenced revised “Controlled Drug - Drug Order Authority” and “Prohibited Practice Areas” conditions. Added “Medical Record Keeping Course” condition.

4) 726 B&P Code - Sexual Misconduct. Added “Professional Boundaries Course.” Added, “Abstain from Alcohol, Drugs” and “Biological Fluid Testing”. The Note describing the “Psychological Evaluation/Treatment” condition has been eliminated.

5) 820 B&P Code - Mental or Physical Illness. Added, “Abstain from Alcohol, Drugs” and “Biological Fluid Testing.” Also added reference to revised “Controlled Drugs – Drug Order Authority.”

6) 2054 B&P Code - Unlawful Representation as a Physician. Increased minimum penalty from “Public Reproval” to “Revoked, stayed with at least 1 year probation.” Revoking the license and then staying it provides the opportunity to help ensure the violation is not repeated. Modified suspension from 90 to 30 days. Generally, citations would have been issued for first and second offenses.

7) 2234(b) B&P Code - Gross Negligence. Added “Record Keeping Course” as a condition.

8) 2234(e) B&P Code - Dishonesty. Lowered the minimum penalty to 3 years depending on nature and severity of the case. If only one incident/offense 5 years may be excessive.

9) 2236 B&P Code - Criminal Conviction. Added “Psychological Evaluation/Treatment” as a term.

10) 2237 B&P Code - Conviction Related to Drugs. Added “Medical Record Keeping Course,” “Drugs – Abstain From Use,” and “Alcohol – Abstain From Use” conditions.

11) 2239 B&P Code – Combined Self Abuse of Drugs and Alcohol Abuse into one cause to be entitled, Drugs or Alcohol Abuse. Added the same conditions for violations of Business and Professions Code Section 2280, “Intoxication While Treating Patients” to cause. Added “Medical Record Keeping Course” as a condition.

12) 2241 B&P Code - Furnishing Drugs to Addict has been renamed Furnishing Drugs or Transmitting Drug Orders to Addict. “Ethics Course” was added as a condition.

13) 2242 B&P Code - Administering or Furnishing Drugs, or Transmitting Drug Orders without Prior Good Faith Examination. Added “Ethics Course”.

14) 2261 B&P Code - Making or Signing False Statements. Lowered the minimum penalty to 3 years depending on nature and severity of case. 5 years may not be appropriate for one incident/offense. Reduced suspension to 30 days. Added “Medical Record Keeping Course”.

15) 2264 B&P Code - Aiding and Abetting Unlicensed Practice. Added “On Site Supervision”.

16) 2266 B&P Code - Failure to Maintain Adequate Records. New cause added with previously identified violation of 3527(a) of the Business and Professions Code.

17) 2306 B&P Code - Practice During Suspension. Deleted the statement, “Revocation is mandatory for a physician assistant under this statute.”

18) 3502.1 B&P Code - Drug Order Authority. Moved Section 3527(a) “Administering, Furnishing, or Transmitting Prescriptions Not Prescribed by Supervising Physician” from directly below because it fits more with this violation and renamed the term, “Prescription” to “Drug Order.”

Increased minimum penalty from “Public Reprimand” to “Revoked, Stayed with at least 1 year probation.” Revoking license then staying it provides the opportunity to help ensure the violation is not repeated. Generally, citations would have been issued for first and second offenses. Added “Maintain Controlled Drug Log” and “Review of Drug Record by Supervising Physician.”

19) 3527(a) B&P Code - Failure to Maintain Records. Added Business and Professions Code section 2266 and moved to new cause.

20) 3527(a) B&P Code. Added “Ethics Course” as a disciplinary condition.

21) 11519(b) Government Code - Violation of Probation. Modified minimum penalty from a suspension to an extension of probation.

Index of Model Disciplinary Orders

Optional Conditions.

Model Disciplinary Order number:

1 – Public Reprimand. Deleted.

2 – Revocation – single cause. Revised for clarification.

3 – Revocation – multiple causes. Revised for clarification.

4 – Initial Probationary License. As a model order for initial licensee.

5 - Suspension – single cause. Deleted.

6 – Suspension – multiple causes (run concurrently) Deleted.

7 – Suspension – multiple causes (run consecutively). Deleted.

8 – Standard Stay Order. This condition has been modified and renumbered as 4.

9. – Controlled Drugs – Drug Order Authority. The partial restriction and total restrictions have been combined into one condition to named, “Controlled Drugs – Drug Order Authority.”

Total restriction – deleted the requirement to return the triplicate and federal forms to the DEA because triplicate scripts are no longer used. All written controlled substance drug orders must be on tamper-resistant prescription forms. Oral and FAX orders for Schedules III – V medications are still permitted.

Triplicate prescription forms required to issue drug orders for Schedule II medications have been replaced by tamper-resistant prescription pads. The tamper-resistant prescription pads are available from private printing companies that have been approved by the Board of Pharmacy and Department of Justice.

Added that all controlled substance forms be surrendered to the supervising physician to ensure respondent does not continue to write drug orders for controlled substances.

Partial Restriction – Added a requirement to surrender the DEA permit and have it reissued with the authorized schedules and set time frames for notification. This requirement will ensure that the respondent does not continue to write drug orders for non-authorized scheduled drugs.

10 - Drugs – Abstain from Use/Exemption for Personal Use. Added a time frame to notify the committee if respondent was issued a lawful prescription for a controlled medication for self-use. Also, moved to condition 9. Other non-substantive changes made as well.

10A - Drugs – Abstain from Use. Modified and moved to condition 7.

11 - Controlled Drugs – Maintain Record. Added that the record must be available for immediate inspection by the committee or its designee. Also added an option to require the supervising physician to review, sign, and date patient records on a regular basis. No changes were made for triplicate form information.

12 – Alcohol – Abstain from Use. Made non-substantive changing to wording.

13 – Biological Fluid Testing. Changed wording.

14 – Diversion Program. Added wording to require the licensee to cease practicing if they are determined to be a danger to public as determined by the diversion program.

15 - Community Services – Free Services – Changes to language to make it clearer the number of hours and time frames to complete.

14 – Medical Record Keeping Course. New. Added course because many discipline cases involve poor or inaccurate medical record keeping. The course will ensure that respondent's record keeping will be more accurate. Also, established time frames for completion of the course.

16 - Education Course – Changed to clarify that the course should address deficiencies, clarify that must be a classroom, conference or seminar setting, and time frame to complete.

17 - Ethics Course – Moved order.

18 - Clinical Training Program – Added clarification that the respondent must comply with the recommendations of the program, establishes time frames for completing the program, clarifies that the program determines successful completion of the program, and that respondent must cease practice if they fail to complete the program. These requirements will protect the public by ensuring that the respondent completes the program in a timely manner and cannot practice if the program has not been completed. Respondent must comply with program recommendations and time frame. Added precedent condition that requires respondent to complete the program before practicing, thus, adding to consumer protection. Deleted wording regarding being a danger to the public because if they were a danger to the public they would not be working.

17- Ethics Course- Moved and reworded to clarify course must be in person added requirement and time frame for completing and submitting proof of participation.

18 – Professional Boundaries Program. This course will be used for sexual misconduct cases to ensure a complete evaluation of respondent in competency, mental health, and an intense program in education and training in boundaries. Clarifies that respondent must pay the cost of the program, must comply with the recommendations of the program, establishes time frames for completing the program, clarifies that the program determines whether or not respondent completes the program, and that respondent must cease practice if they fail to complete the program. The course will help to ensure the conduct is not repeated. Added an optional precedent condition that requires respondent to complete the program prior to practicing.

19 - Psychological Evaluation – Adds that the evaluator submits recommendations, that respondent must comply with recommendations of evaluator, establishes time frames and requires respondent to cease practice if the evaluator or treating practitioner determines that respondent is a danger to the public. Made minor changes to wording that respondent must pay costs associated with the evaluation. Also added precedent condition that requires respondent to complete the evaluation prior to practicing.

20 - Medical Evaluation Treatment - Changed similar to Psychological Evaluation/Treatment condition.

21 - Monitoring and Supervision – Deleted and replaced by new “Approval of Supervising Physician” added to standard terms.

22 - Third Party Presence – Sexual Transgressors. Changed Third Party Presence to Chaperone. Added consulting and suggestions for type of patient treated. Reworded the Note to clarify this provision.

23 – Restrict Practice – Incompetence. Combined 23, 24, and 25 into one condition that will address all prohibited practice.

24 – Prohibited Practice – Setting. See 23 above.

25 – Restricted Practice – Patients. See 23 above.

26 – Maintenance of Patient Medical Records. Minor grammatical changes made.

27 - On Site Supervision – changed to have either 100% or 50% supervision for more options. Added supervising physician review patient as an option.

28 - Case-by-Case Review of Patient. Deleted sentence because it is redundant. See order 26.

29 - Maintenance and Review of Drug Records by Supervising Physician. Deleted. Requirement for supervising physician to review controlled drug record added to “Controlled Drugs – Maintain Record”.

30 - Notification of Employer and Supervising Physician. Moved to Standard Conditions.

31 – File Monthly Probation Reports. Deleted. Probationers are required to submit quarterly reports under “Standard Conditions.” Filing monthly reports is duplicative and unnecessary because quarterly reports are adequate for probation monitoring purposes.

Standard Conditions

25 – Approval of Supervising Physician – Added. Requires that the committee approve the supervising physician and practice plan before respondent may practice to ensure appropriate supervision is in place. The condition replaces “Monitoring/Supervision” as an optional condition. Establishes time frames, requires supervising physician to submit quarterly reports, establishes procedures for changing supervising physicians.

26 – Notification of Employer and Supervising Physician. Moved from option to standard condition. Rewording non-substantive. Ensures respondent provides a copy of the disciplinary order to both employer and supervising physician.

27 – Obey All Laws. Moved from old 32.

28 – Quarterly Reports. Moved from old 33.

29 - Probation Surveillance Program Compliance. - New title. Changed wording and added that respondent shall appear for the initial interview (former condition 37).

35 – Interview with Medical Consultant. No changes.

36 – Tolling for Out-of-State Practice or Residence. No changes.

37 – Initial Probation Interview. Renumbered to conditions 29 and 34.

32 – Failure to Practice as a Physician Assistant – California Residence. New. Added condition regarding respondent living in California and not practicing. Added that the license shall be canceled after two years.

38 - Unannounced Clinical Site Visit. Changes requirement of site visit from mandatory once per year to optional that committee may make visits at any time to ensure probation compliance.

34 - Condition Fulfillment New. Added. Allows the committee to take respondent's previously completed courses, evaluations, and treatment into consideration for fulfillment of conditions. Respondent may not be required to complete duplicative courses or evaluations.

39 - Completion of Probation. Added that respondent must pay all financial obligations at least 60 days before completion of probation. Deleted "as determined by the committee's executive officer."

40 – Violation of Probation. No changes.

41 – Cost Recovery. No changes.

38 – Probation Monitoring Costs. New. Added provision that respondent shall pay the costs associated with probation monitoring.

42 – Voluntary License Surrender. Changed to clarify and added respondent must return wallet and wall certificate licenses. Respondent shall pay the costs associated with probation monitoring.

Delete committee contact information on last page of document because it is provided in the front of the guidelines.

Underlying Data

1) Physician Assistant Committee Manual of Disciplinary Guidelines and Model

2) Government Code Section 11425.50(e)

Business Impact

This regulation will not have a significant adverse economic impact on businesses because it only affects individual licensees who are disciplined by the committee.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

The committee is required to take this action pursuant to section 11425.50(e) of the Government Code.